

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3042 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CHANDANBEN CHUNILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3042 of 1996
M/S THAKKAR ASSOC. for Petitioners No. 1-4
Mr. S.P. Sen, AGP for Respondent No. 1
SERVED BY RPAD - (R) for Respondent No. 2
-

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/10/2001

CAV JUDGEMENT

Heard learned Sr. Advocate Mr. P.M. Thakkar
for the petitioners and Mr. Sen, the learned AGP for the

respondent authorities. Initially, notice was issued in this matter and it was made returnable on 8th May, 1996 and by way of ad-interim relief, status quo with respect to the subject matter of the petitioner was ordered to be maintained by both the parties, by order dated 23rd April, 1996. Thereafter, this Court has issued rule on 28th June, 1996 and ad-interim relief granted earlier was made confirmed till the final disposal of the petition.

Against this petition, the respondent No.2 Competent Authority and the Deputy Collector Shri S.A. Patel has filed an affidavit in reply on 20th October, 1999 and certain documents have been brought on record. Rejoinder thereto has been filed by the petitioner on 6th December, 1999. Thereafter, the additional affidavit in reply has been filed by the competent authority and the deputy collector respondent No. 2 Shri V.L. Patel on 12th October, 2001 and relevant orders passed by the competent authority as well as the panchanama and other relevant orders were produced on record. Against that, the petitioners have filed further rejoinder dated 16th October, 2001.

Brief facts of the present petition are as under:

According to the petitioners, one Shri Chunilal Tribhovandas Patel and the petitioner No.1 Chandanben Chunilal Patel submitted Form No.1 under section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 before the competent authority on 15th September, 1976 declaring certain lands in the holding of the said persons. These lands were covered by survey no. 337, 386, 387, 339, 394, 395, 407, 246/1, 246/2 and two houses covered by survey No. 16/1. According to the petitioners, the lands covered by survey no. 337, 386, 387, 339 and 394 were exempted under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 ("the ULC Act, 1976" for short) by the Government. Therefore, the decision of the competent authority was to be made only in respect of the land bearing survey No. 395, 407, 246/1 and 246/2. The competent authority passed the impugned orders on 17.3.1986 and thereby declared total of 29785 square meters of the land as excess land after granting one unit of 1500 square meters in favour of the widow of the deceased. The petitioners have pointed out that even though the subject property was the HUF Property, the competent authority has refused to grant unit in respect of four major sons and two major daughters, who are major admittedly as on the appointed date. Further, the competent authority has ignored the evidences submitted before it showing that the lands covered by all the above four survey numbers are mainly used for the agricultural

purpose and, therefore, same are required to be exempted. Being aggrieved by the said order, an appeal preferred by the petitioner under section 33 of the ULC Act, 1976 before the tribunal came to be dismissed by the tribunal on 30.10.1993 and the order passed by the competent authority was upheld by the tribunal which order of the tribunal dated 30.10.1993 was challenged by the petitioner before this court by filing the petition being special civil application no. 3876 of 1994 wherein the matter was remanded back to the tribunal while quashing and setting aside the tribunal's order dated 30.10.1993. Upon remand, the tribunal called upon the petitioners to submit their submissions if any. The petitioners submitted their written submissions before the tribunal and took various contentions including the contention that the property in question was the HUF property and that each one of the major coparceners are entitled to one unit each of 1500 sq. mtrs. Further, they also produced the revenue records in respect of survey no. 395, 407, 246/1 and 246/2 reiterating that these lands are mainly used for agricultural purposes. It was also highlighted by the petitioners that the lands covered by House No. 9/6 and 9/1 cannot be included in the holding of the petitioners in view of the ratio laid down in case of Mira Gupta. On 5.1.1996, the tribunal passed the impugned order and thereby once again confirmed the order passed by the competent authority barring the decision with regard to the house no. 9/6 and 9/1 which the tribunal by following the ratio laid down in case of Mira Gupta, allowed to be excluded from the holding of the petitioners. The tribunal further ignored the revenue records to substantiate the fact that the under referred lands are being used for agricultural purposes. Further, the tribunal also grossly erred in not accepting the contention of the petitioners that the properties were that of HUF and, therefore, each of the coparceners are entitled to one unit each. The petitioners have, therefore, approached this Court by way of this petition and have submitted that in view of the aforesaid facts, the orders passed by the competent authority as also by the tribunal are completely illegal, arbitrary, without application of mind and competence and without jurisdiction and cannot sustain.

2. At the time of filing of the present petitioners, as per paragraph 10(A) of the petition, the petitioners prayed for quashing and setting aside the impugned orders passed by the tribunal dated 5.1.1996, thereby confirming the order passed by the competent authority dated 17.3.1986 as being illegal, arbitrary, without application of mind and competence, jurisdiction besides

violative of Art. 14 and 21 of the Constitution of India. As per para 10(B) of the petition, the petitioners have prayed for staying the implementation, operation and execution of the impugned orders dated 5.1.1996 passed by the tribunal as well as the orders passed by the competent authority dated 17.3.1986 and be further pleased to restrain the respondents, their servants from taking the possession of the subject matter pending hearing and final disposal of this petition.

3. In the present petition, the petitioners have mainly contended that the lands in question owned by the petitioners are mainly used for agricultural purposes and, therefore, same are required to be exempted under the ULC Act, 1976 and it was also pointed out that the competent authority has already granted exemption in respect of the land covered by survey No. 337, 386, 387, 339 and 394 under section 20 of the ULC Act, 1976. Reliance has been placed by the petitioners on section 2(o) and section 2(q) of the ULC Act, 1976. The petitioners have also submitted that the lands in question are being used for the purpose of cultivation of Padi since 1951-52 and in fact, even till the date, said lands are being used for cultivation alone. Second contention raised by the petitioner is to the effect that the properties in question are HUF Properties and in the process, the competent authority has refused to grant unit in respect of four major sons who even according to their own orders, were major on the appointed date and, therefore, the petitioners are entitled for seven units in all, one for widow of the deceased and four for 4 major sons and two for 2 major daughters. The petitioners have submitted that the said lands were purchased from the funds of the HUF and, therefore, each of the coparceners of the said HUF are entitled to have one unit of 1500 sq. mtrs. According to the petitioners, these facts were brought to the notice of the tribunal by the advocate for the petitioners by making clear statement in para 3 of the memo of appeal dated 22.8.1995 and thus, respective age as on 1.4.1976 has been highlighted of all these persons and it has been submitted that the said persons are entitled to have one unit each as per section 4(7) of the ULC Act, 1976. Copy of the memo of petition has been annexed to the present petition by the petitioners. The third contention raised by the petitioner is to the effect that the lands in question were mainly used for cultivation and, therefore, were required to be exempted from the provisions of the ULC Act, 1976 and necessary revenue records to that effect was produced by the petitioners before the tribunal. However, the tribunal has ignored the relevant

record and the tribunal has come to the conclusion that the property was self acquired property of the husband of the petitioner no.1. The fourth contention raised by the petitioners is to the effect that the tribunal has passed the order dated 5th January, 1996 in pursuance to the order passed by this Court to pass appropriate fresh orders after considering all these material. However, the said order passed by this court in special civil application no. 7876 of 1994 dated 21st September, 1994 has been ignored by the tribunal.

4. The respondent no.2 competent authority has filed the first affidavit on 20th October, 1999 contending inter alia that Shri Chunilal Tribhovandas Patel and Chandanben Chunilal Patel had submitted Form No.1 under section 6(1) of the ULC Act, 1976 on 15th September, 1976; draft statement under section 8(3) of the ULC Act, 1976 was served upon the petitioners on 19th May, 1982; declarants raised several objections against the statement through their advocate and ultimately by order dated 17th March, 1986, the competent authority has declared 29785 sq. mtrs. of the land as excess vacant land and, thereafter, further proceedings were undertaken by the competent authority and the notification under section 10(1) was issued on 31st July, 1986 and published in the Government Gazette on 11th September, 1986 and, thereafter, notification under section 10(3) of the ULC Act, 1976 was issued on 30.1.1987 and the same was also published in the Government Gazette on 26th February, 1987 and thereafter, notice under section 10(5) of the ULC Act, 1976 was issued on 3rd June, 1987 and ultimately, possession of the land was taken over by the authority on 22nd December, 1987 in the presence of the panchas. The deponent of the said affidavit in reply has contended that the Mamlatdar, Baroda was informed by the competent authority to enter the name of the State Government in respect of the lands in question in the revenue records and, thereafter, notice for determination of the compensation under section 11 of the ULC Act, 1976 was issued on 12th January, 1988. According to the deponent of the said affidavit in reply, appeal was filed by the petitioners under section 33 of the ULC Act, 1976 on 27th January, 1988 and the tribunal decided the said appeal on 30th October, 1993 wherein the said appeal was rejected by the tribunal while confirming the order passed by the competent authority. The respondent No.2 has also submitted that thereafter, 96 plots and 150 plots were allotted to the urban poor under the provisions of section 23 of the ULC Act, 1976 under the Scheme for allotment of plots admeasuring 25 sq. mtrs. out of the aforesaid excess vacant lands, by a committee

presided by the District Collector, by orders dated 6th June, 1994. It has also been submitted that 84 of the beneficiaries under the Scheme have also paid the necessary amount towards the allotment of the plots. The deponent has also submitted that being aggrieved by the aforesaid order of the tribunal, a petition was filed by the petitioners before this Court being special civil application no. 7876 of 1994 on 16th June, 1994 which was allowed by judgment and order dated 21.9.1994 by this court while quashing and setting aside the order of the tribunal dated 30.10.1993 and the matter was remanded to the tribunal for its restoration to the file and for its fresh decision according to law in light of the judgment. The deponent has also submitted that by order dated 5.1.1996, the tribunal has partly allowed the appeal and the tribunal has excluded the constructed properties from the holding of the petitioner and thereby has declared 29611 sq. mtrs. of the land as excess vacant land. The deponent has also submitted that in view of the provisions of section 3 and 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 ("ULC Repeal Act, 1999" for short), present proceedings would abate. However, according to the deponent of the said affidavit in reply, in view of the order dated 5th January, 1996 passed by the tribunal, the petitioners would be entitled to restoration of 175 sq. mtrs. of the land out of the lands of which possession is taken over by the Government on 22nd December, 1987. So far as the challenge to the impugned order dated 5th January, 1996 is concerned, it has been submitted by the deponent of the said affidavit in reply that the proceedings before this Court would abate and in view of the aforesaid facts and circumstances, the deponent has submitted that the petition is devoid of any merits or substance and requires to be rejected in limine. Alongwith the said affidavit in reply filed on behalf of the respondent No.2, relevant notification under section 10(1), 10(3) and 10(5) as well as the panchanama and the letter dated 11th January, 1988 have been brought on record by the deponent of the said affidavit in reply.

5. As against the said affidavit in reply filed by the respondent no.2, the petitioners have filed the rejoinder contending inter alia that the petitioners are in possession of the land as on 30th March, 1999 and, therefore, the proceedings of the present petition are required to be abated. The petitioners have denied the statements made in the affidavit in reply by the respondent No. 2 that the possession of the land in question has been taken over by the respondent No.2 from

the petitioners on 22nd December, 1987. In light of this denial and the dispute raised by the petitioners in respect of having the possession of the land in question by the Government, dates and events have been enumerated by the deponent in the said rejoinder filed on behalf of the petitioners which are reproduced as under:

- "17.3.1986 The competent authority passed the order and declared 29785 sq. mtrs. as excess vacant land.
- 19.7.1986 The petitioners filed an appeal before the Urban Land Tribunal against the order passed by the competent authority dated 17.3.1986 being appeal no. 513/86.
- 31.7.1986 The respondent authority issued notification under section 10(1) of the Act.
- 27.1.88 The appeal filed by the petitioners came to be renumbered as appeal no. 27 of 1988.
- 30.1.1987 The notification under section 10(3) of the Act came to be issued.
- 3.6.87 The respondent Government issued notice under section 10(5) of the Act.
- 2.2.1988 The tribunal stayed the operation of the order passed by competent authority dated 17.3.1986.

At this stage, it is pertinent to note by the interim order dated 2.2.1988, the tribunal ordered the status quo ante as it was prevailing on 16.2.1976. I beg to annex a copy of the order dated 2.2.1988 at Annexure "I".

6. In view of the above facts wherein the dates and the events have been specifically given by the petitioners, the petitioners, in their affidavit in rejoinder, have further submitted that having obtained the interim orders from the tribunal, the petitioners had addressed a letter to the office of the competent authority and the Deputy Collector as also to the Talati cum Mantri of village Danteshwar and the talati cum mantri of village Kapurai dated 23rd September, 1988 and by these letters, the petitioners have stated that the tribunal has granted the order of status quo ante on 2nd February, 1988 and, therefore, no further action should be taken by the respondent authorities in respect of the subject land. It was also stated by the petitioners that they are cultivating the said subject land even as on

date and that no further proceedings be undertaken pursuant to the orders passed by the competent authority. It was also pointed out by the petitioners in rejoinder that the interim orders passed by the tribunal on 2nd February, 1988, it was made clear that the tribunal has ordered status quo ante as it was prevailing on 16th February, 1976 meaning thereby the possession as on 16th February, 1976 was required to be maintained by the competent authority and it was not in dispute that as on 16th February, 1976, the petitioners were in possession of the subject land and the ULC Act, 1976 itself had come into force on 17th February, 1976. It has also been pointed out by the deponent of the said affidavit in rejoinder filed on behalf of the petitioners that the petitioners are in possession of the subject land and the possession has been protected by more than one interim order/final orders passed by the authorities/court and the appeal filed by the petitioners came to be dismissed on 30th October, 1993 and against that, special civil application no. 3876 of 1994 was filed by the petitioners. The petitioners have pointed out following details in their affidavit in rejoinder :

"21.9.94 This Hon'ble Court allowed the special civil application No. 3876 of 1994 and remanded the matter to Urban Land Tribunal at Ahmedabad after quashing and setting aside the order dated 30.10.1993 passed by the tribunal for its fresh decision according to law.

5.1.1996 The Tribunal passed the order on remand afresh after hearing the parties. A bare perusal of the order which is annexed at Annexure "D" to the petition, will go to show that while disposing of the appeal, directed the modification of the order passed by the competent authority and also directed the issuance of the modified final statement. Thus, in view of the order passed by the Tribunal, the order of the competent authority was required to be modified and the competent authority was also directed to issue the modified final statement as per the provisions of section 9 of the Act. I say and submit that it was, therefore, all along accepted by the competent authority that the petitioners are in possession of the subject land and the possession was not taken apropos to the

notification under section 10(3) of the Act or notice u/s.10(5) of the Act. I say and submit that the order passed by the Tribunal was challenged before this Hon'ble Court by filing the present Special Civil Application.

The challenge was mainly made on the ground that the Tribunal had ignored the revenue record to substantiate the fact that the subject land is being used for Agricultural purpose and therefore, in view of the judgment of the Hon'ble Supreme e Court in the case of Atiya Begum, the petitioners are required to be given protection in respect of the land. I say and submit that this Hon'ble Court upon hearing the learned advocate appearing for the petitioners, was pleased to grant order of status quo by order dtd. 23.4.1996 which is continued till date. "

7. In light of the above facts, the deponent of the said affidavit in rejoinder filed on behalf of the petitioners has further submitted that the protection has been granted by the tribunal as to the possession of the petitioners and, therefore, the petitioners are in possession of the subject land and, therefore, in view of the provisions of section 3 read with section 4 of the ULC Repeal Act, 1999, the proceedings are required to be abated. The petitioners are in possession of the subject land. The petitioners have also disputed the fact that the possession was taken over as alleged on 22.12.1987. According to the petitioners, so called possession being taken over on 22.12.1987 was mainly and merely a paper possession and was done ex parte and according to the petitioners, they are in actual and physical possession of the subject land and, therefore, have denied the averments made in that regard in the affidavit in reply filed by the respondent no.2. The petitioners have also relied upon the revenue record in respect of the subject land to prove that the petitioners are in possession. In the said revenue record, according to the petitioners, the petitioners are shown as the owners of the subject land between 1952 and 1995 and even during the current year 1999 to 2000, they are in possession and, therefore, according to the petitioners, considering the revenue records, the possession of the land in question has not been taken over by the Government as on the date of the ULC Repeal Act, 1999 and, therefore, according to them,

the present proceedings will abate in their favour. It is also pointed out by the petitioners that in respect of the subject land, the revenue has also been paid by the petitioners upto 15th September, 1999 and the petitioners are having the possession of the subject land as on today. It has also been pointed out by the petitioners that during the course of the earlier proceedings before the appellate authority as well as before this Court, the competent authority has not disclosed that the possession of the subject land has already been taken over by the Government or by him though the proceedings before the tribunal were held twice and at the time of granting interim relief in the form of status quo ante also, it was not pointed out by the competent authority before the tribunal that the possession of the land in question has already been taken over by him. Not only that, no objections have been filed by the competent authority and before this Court also in the year 1994, while the interim relief was being granted by this Court in favour of the petitioners, the competent authority has not disclosed these facts about taking over of the possession by him and, therefore, the petitioners have submitted that after the remand before the tribunal, the petitioners did not file any objections as to the possession. In any view of the matter, the fact that the tribunal had ordered the status quo ante to be maintained by the respondent authority, which order is continued from time to time by the tribunal/this court, the possession has remained with the petitioners. The deponent of the said affidavit in rejoinder has also submitted that the revenue records also demonstrate this fact which shows that the petitioners are the owners of the subject land. It has also been denied that 96 plots and 150 plots were allotted to the urban poor under section 23 of the ULC Act, 1976 as alleged. It has been submitted that even if any orders are passed, the same are of no consequence as the respondent authorities could not have issued or passed such orders in view of the interim order of the tribunal and this Court.

8. Thereafter, additional affidavit in reply has been filed by the respondent No.2 contending inter alia that 96 plots and 150 plots were allotted to the urban poor by order dated 6.6.1994. It has been submitted that the District Collector had passed an order dated 6.6.1994 but as the matter was subjudiced before this Court, 106 persons were allotted and given possession of the land from the land bearing survey No. 317/2 paiki. It has been submitted that nobody get allotted the land of survey nos. 407 and 395 of village Kapurai and survey No. 246/1 and 246/2 of village Danteshwar of District

Baroda. Therefore, the deponent of the said additional affidavit in reply has made it clear that the possession of the land in question has not been handed over to the urban poor as per order dated 6.6.94 passed by the District Collector but in reality, 106 persons were allotted and given possession from the land bearing survey no. 317/2 which is not the land of the subject matter and no allotment has been made or nobody got allotted the land of survey No. 407 and 395 of village Kapurai and survey No. 246/1 & 246/2 of village Danteshwar, District Baroda. The respondent No.2 has submitted that the notice under section 10(5) of the ULC Act, 1976 has been served upon the petitioners by Registered Post A.D. and acknowledgment thereof has been placed on record. Copy of the panchanama dated 22.12.1987 has also been placed on the record by the deponent of the said affidavit in reply. It has been submitted that the Deputy Collector is authorized by the State Government vide notification to take possession of the land under section 10(6) of the Act and copy thereof has been produced on the record of this petition alongwith the said affidavit in reply. The deponent has further submitted that the deputy collector has taken over the possession of the said land on 22.12.1987 and against the order of this court (Coram : D.C. Srivastava,J.) dated 5.12.2000 passed in special civil application no. 8402 of 1999, the State of Gujarat has preferred letters patent appeal no. 1335 of 2001 before this Court alongwith civil application no. 9661 of 2001 and civil application no. 9662 of 2001 and the said letters patent appeal is pending for hearing. It has been submitted that this Court (Coram : A.N. Divecha,J.) has passed order dated 21.9.1994 in special civil application No. 7876 of 1994. It has also been submitted by respondent no.2 that in consonance with the direction of this Court (Coram : H.K. Rathod,J.) dated 4.10.2001, the Maintenance Surveyor of the ULC Department has done survey as to the present status of the land on 5.10.2001 and the copies of the two panchanamas drawn in respect of the two villages has been produced on record alongwith the said affidavit. It has been submitted that the original copies of the said panchanamas have been tendered before this Court on 11.10.2001 during the proceedings of the matter and the copy of the same has been served upon the advocate for the petitioner on 11.10.2001. The respondent has reiterated that the possession of the land in question has been taken over by the State on 22.12.1987 and since then, the Government is in possession of the land and in no occasion, the State Government has handed over the possession of the land nor the petitioners have ever approached the State of Gujarat

to take back the possession of the subject land from the authorities. It has been denied that the possession taken over by the State Government is a mere paper possession and it has been submitted that the physical possession of the said land is also taken over by the State Government on 22.12.1987 in presence of the panchas. It has been submitted that the actual and physical possession of the land was taken in presence of the panchas on 22.12.1987, the name of the State could not be entered in the revenue records as the matter was subjudiced before the Court and, therefore, the revenue records cannot be relied upon as the State is in possession of the land. It has been submitted that way back on 11.1.1988, the Deputy Collector, ULC had wrote a letter to the Mamlatdar, Vadodara to enter the name of the State in the revenue records. Copy of the said letter dated 11.1.1988 has been produced on the record. Rest of the contents stated in the earlier affidavit in reply dated 20.10.1999 filed by the State have been reiterated by the deponent of the said affidavit in reply.

10. As against that, the petitioner has filed sur rejoinder on 16th October, 2001 and has raised several contentions inter alia that Chunilal T. Patel died on 16th June, 1984 during the pendency of the proceedings before the competent authority and the competent authority was informed in that regard by the heirs and legal representatives of the deceased Chunilal T. Patel and the competent authority was also informed about the names of the heirs and legal representatives of the deceased. This fact has been reflected in the order passed by the competent authority dated 17th March, 1986. Therefore, the competent authority did not serve copy of the final statement as required under section 9 of the Act upon the heirs and legal representatives of the deceased Chunilal T. Patel. Further contention has been raised by the petitioner that the notification under section 10(3) of the ULC Act, 1976 were issued in then name of a dead person and both the said notifications are nullity and void ab initio and both the notifications cannot have any legal existence and, therefore, no action can be taken on the basis of the said notifications. Similarly, notification under section 10(5) of the Act has also not been issued in the names of the heirs and legal representatives of the deceased and it was issued in favour of Chandanben alone. The other heirs and legal representative of the said deceased Chunilal T. Patel who are the persons interested and who are admittedly in joint possession have not been given notice in writing as required under section 10(5) of the ULC Act, 1976 and,

therefore, all the notifications under section 10(1),10(3), 10(5) are nullity in the eye of law and, therefore, the respondents are not entitled to take any action or proceedings for possession by relying upon the aforesaid notifications. It has also been reiterated that the petitioners are in actual and physical possession of the land in question. both as on the date of the Repeal of the Principal Act and even as on this date. In the revenue record, nowhere the land in question has been mentioned in the name of the Government. The petitioner has also contended that the deputy collector is not authorized to take the possession as per the authorization letter dated 24.11.1993. It has been submitted that the Government has authorized only the Additional Collector, Competent Authority and the Additional Collector, Vadodara sub delegated his authorization in favour of the competent authority and the Deputy Collector, Vadodara as the person to take possession. It has been submitted that the Additional Collector (ULC) had no power to sub-delegate his delegation. The petitioners have placed reliance upon the definition of the competent authority as per section 2(d) as well as section 3 read with section 4 of the ULC Repeal Act, 1999. Reliance has been placed upon the decision of this Court in case of D.S> Patel and Construction company versus Competent Authority and Dy. Collector, Rajkot reported in 1997 (3) GLR 2375 and it has been submitted that if during the pendency of the appeal, notification under section 10(3) and notice under section 10(5) issued for taking possession of the surplus land will have to be ignored. Reliance has placed on the observations made in para 11 of the said judgment. In light of the observations made by this Court, the petitioners have submitted that the notification under section 10(1), 10(3) and 10(5) were issued during the pendency of the appeal proceedings before the tribunal and, therefore, they are not having any consequence and if the possession is alleged to have been taken in view of the alleged notifications, same is having no consequence. It has also been submitted that vide order dated 2.2.1988, the tribunal had stayed the operation of the order passed by the competent authority dated 17.3.1986 by ordering status quo ante as prevailing on 16.2.1976. It has also been submitted that with the passing of the aforesaid interim order by the tribunal on 2.2.1988, the alleged possession which was taken on 22.12.1987 is of no consequence and is required to be ignored. It has also been submitted that these facts have not been controverted by the respondents. It has also been submitted that after remanding back the matter by this court, the tribunal has passed a fresh order on

5.1.1996 whereby the tribunal has modified the order passed by the competent authority to some extent and the competent authority was directed to pass a fresh order after making modification as per the tribunal's order and, therefore, it was incumbent upon the competent authority to pass fresh orders under section 8(4) of the ULC Act, 1976 and to issue fresh final statement under section 9 of the Act and no further proceedings for taking the possession have been undertaken by the Government subsequent to the orders passed by the tribunal on 5.1.1996 and, therefore, the factum of the possession which was alleged to have been taken over by the State Government on 22.12.1987 as alleged has no legal consequence and that is considered to be illegal and void ab initio. Lastly, the petitioner has pointed out that in view of the fact that the possession has been taken over in view of the earlier proceedings cannot be said to be in conformity with the provisions of section 3 and 4 of the ULC Repeal Act, 1999 and, therefore, when the petitioners are having physical and actual possession of the subject land and in light of these facts, according to the petitioners, the present petition must be disposed of as having abated in favour of the petitioners.

During the course of hearing, learned Senior Advocate Mr. P.M. Thakkar has submitted that the first order was passed by the competent authority on 17.3.1986 and, thereafter, immediately, the petitioners had filed appeal under section 33 of the ULC Act, 1976 before the tribunal which was registered as Appeal No. 513 of 1986 and, thereafter, in view of the first order dated 17.3.1986 passed by the competent authority, during the pendency of the appeal under section 33 of the ULC Act, 1976 against the said order, the competent authority has issued notification under section 10(1) of the ULC Act, 1976 on 31.7.1986 and, thereafter, notification under section 10(3) of the Act was issued by the authority on 30.1.1987 and notification under section 10(5) of the ULC Act came to be issued on 3.6.1987. He has submitted that the appeal filed by the petitioners in the year 1986 being appeal no. 513 of 1986 was renumbered as appeal no. 27 of 1988, in the year 1988 and, thereafter, the tribunal stayed the operation of the order passed by the competent authority dated 17th March, 1986 by order dated 2nd February, 1988 with a direction to the authorities to maintain status quo ante as it was obtained on 16th February, 1976. In light of these submissions, learned Sr. Advocate Mr. P.M. Thakkar has submitted that the notifications under section 10 (1) to 10(5) of the ULC Act, 1976 were issued by the competent authority during

the pendency of the appeal before the tribunal and, therefore, said notifications are not having any legal effect. Similarly, he further submitted that action of taking over of the possession in view of the said notifications during the pendency of the appeal on 22nd December, 1987 is also having no legal consequence since according to him, the steps taken during the pendency of the appeal will have no any legal consequence. He has relied upon the decision of this court in case of D.C. Patel and Construction Company versus Deputy Collector, ULC, Rajkot reported in 1997 (3) GLR 2375 and has submitted that this Court has held in the said decision that the notifications issued under section 10(3) and notice under section 10(5) of the ULC Act, 1976 for taking possession of the surplus land would lose its importance or significance and such notices and notifications will have to be ignored in such cases and it was also held that even after the disposal of the appeal, some more time ought to have been given for approaching the higher forum. He has relied upon para 11 of the said decision.

Learned Sr. Advocate Mr. Thakkar has also submitted that the net effect of the ad-interim order dated 2nd February, 1988 passed by the tribunal directing the respondents to maintain status quo ante in respect of the land in question as on 16.2.1976 would be that the tribunal has restored the position as regards the possession of the land in question as on 16.2.1976. He has submitted that the said interim order dated 2nd February, 1988 passed by the tribunal in the appeal has not been challenged by the respondent authorities before the higher forum and that has remained in operation during the pendency of the appeal upto 30.10.1993 and, therefore, same is binding to the respondent authorities. Therefore, according to Mr. P.M. Thakkar, the learned Sr. Advocate appearing for the petitioners, if any notice or notification has been issued and the possession has thereafter been taken over by the State Government on the basis of the order dated 17.3.1986 during the pendency of the appeal against the very same order, such action of issuance of notification and notice and taking over of the possession is having no any legal effect or consequence firstly because of the pendency of the appeal and secondly in view of the interim order dated 2nd February, 1988 directing the respondents to maintain status quo ante as on 16.2.1976 since it was contrary to the interim order dated 2nd February, 1988 and also contrary to the principles laid down by this Court in case of D.S. Patel & Construction Company versus Competent Authority & Dy. Collector, Rajkot reported in 1997 (3)

GLR 2375. He has further submitted that the interim order passed by the tribunal is binding to the respondents and the respondents are required to implement the interim order which has not been challenged by the respondents before the higher forum. Therefore, according to the submissions made by Mr. P.M. Thakkar, the learned advocate appearing for the petitioners, the net result of the interim order passed by the tribunal is that whatever action taken prior to 2nd Feb. 1988 in respect of the land in question is not legal and the same is required to be ignored. He has also submitted that the tribunal has decided the appeal on 30th October, 1993 and has rejected the appeal filed by the petitioners and, therefore, upto the decision of the tribunal in appeal, the interim order dated 2.2.1988 was in existence without any challenge and it was continuing and operating against the respondents and, therefore, same is binding to the respondent authorities. He has submitted that the order dated 30.10.1993 passed by the tribunal was challenged by the petitioners before this court by filing special civil application no. 7876 of 1994 wherein, initially, notice was issued by this court returnable on 5.7.1994 and meanwhile, status quo as regards possession was granted as on that day by order dated 16th June, 1994 and the said order of status quo as regards possession passed by this court in said petition had remained in force upto the decision given by this court on 21.9.1994. He has submitted that while disposing of the said petition, this Court has set aside the order dated 30th October, 1993 passed by the tribunal in appeal and the matter was remanded back to the tribunal for a fresh decision for its restoration to the files of the tribunal. In light of these submissions, he has submitted that in view of the order of remand made by this Court by order dated 21.9.1994 in the aforesaid petition, the interim order dated 2nd February, 1988 passed by the tribunal in the appeal has also been restored. Similarly, as per the final order passed by this court in the said petition, both the parties were also directed to maintain status quo during the pendency of the remand appeal. he has submitted that pursuant to the order of remand made by this court while setting aside the order dated 30.10.1993 made by the tribunal in appeal, the tribunal has decided the appeal and passed order on 5.1.1996 and modified the order of the competent authority dated 17th March, 1986 and, therefore, this modification would require fresh proceedings under the provisions of the ULC Act, 1976 and the earlier proceedings which were initiated in view of the order dated 17th March, 1986 are required to be cancelled. Learned advocate Mr. Thakkar has submitted that as per the directions issued by the tribunal on

5.1.1996, the order passed by and action thereto taken by the competent authority is required to be cancelled and as per the directions issued by the tribunal on 5.1.1996, the competent authority was required to prepare final statement under section 9 of the ULC Act, 1976 and after issuing the final statement, detailed procedure as prescribed under section 10 of the ULC Act, 1976 is required to be undertaken by the respondents. On the basis of these submissions, learned Sr. Advocate Mr. P.M. Thakkar has submitted that no further process has been initiated by the respondent authorities after the order passed by the tribunal on 5.1.1996. He has also submitted that though the respondents have filed two affidavits before this Court, however, in none of the affidavits, the respondents have pointed out that after the order passed by the tribunal on 5.1.1996, the final statement has been issued or not and thereafter, whether the proceedings under section 10 have been initiated or not in view of the appellate orders dated 5.1.1996 and, therefore, those earlier orders and the notifications and the possession based on the earlier order dated 17.3.1986 passed by the competent authority are not having any legal effect and the same are required to be ignored. According to him, these are undisputed facts before this court and it was not the case of even the respondents that after the orders dated 5.1.1996, any fresh final statement has been prepared and fresh process has thereafter been initiated under section 10 of the ULC Act, 1976. He has also submitted that it is not even the submission of the learned AGP Mr. Sen and, therefore, these facts may be considered to be undisputed between the parties. In support of his contentions, he has relied upon the decision of this court in case of Dahyabhai Manorbhai Patel versus Competent Authority and the additional Collector, Unit-2, Baroda reported in 1987 (2) GLR 1396. He has placed reliance on some observations made by this Court in the said decision. He has also relied upon the observations made by this Court (Coram : H.K. Rathod, J.) in its recent decision in case of Devabhai Dhanabhai Bharvad versus State of Gujarat in special civil application No. 69 of 1997 dated 27th September, 2001.

Learned senior advocate Mr. P.M. Thakkar has also submitted that the Form under section 6(1) of the ULC Act, 1976 was filed by one Chunilal Tribhovandas Patel who died on 16th June, 1984 and the competent authority passed order on 17th March, 1986 and, thus, during the pendency of the proceedings relating to Form 6(1) before the competent authority, Chunilal Tribhovandas Patel has expired on 16th June, 1984 and

thereafter, on 11th May, 1985, heirs and legal representatives of the deceased Chunilal T.. Patel had submitted an application before the competent authority requesting the competent authority to join all the heirs and legal representatives of deceased Chunilal T. Patel who has expired on 16th June, 1984 in the proceedings pending before the said authority. He has also submitted that alongwith the said application, Vakalatnama was also filed by the heirs and legal representatives before the competent authority and engaged one advocate Shri Mohanbhai Maneklal Oza in Declaration case No. 7195. He has submitted that these facts have also been reflected from the order passed by the competent authority and yet, upto the notification under section 10(1) and 10(3) of the Act which were issued in the name of the deceased Chunilal T. Patel, a dead person, and, therefore, such notifications are nullity and the land in question shall remain in legal possession of the petitioner and cannot be considered to have been vested in the Government. He has also submitted that the notice under section 10(5) of the Act was served upon the widow of the deceased CHUNILAL T.. Patel and acknowledgment has been placed on record by the respondents in that regard wherein name of Chandanben Chunilal Patel has been mentioned and there is her signature acknowledging receipt of such notice under section 10(5) issued by the competent authority. He has also submitted that even the notice under section 10(6) of the ULC act has been issued in the name of the widow Chandanben C. Patel and the other heirs but no acknowledgment has been placed on the record by the respondents that such notice has been received upon the other heirs and legal representatives of the deceased Chunilal T. Patel and, therefore, he has submitted that considering the fact that the notification under section 10(1) was issued in the name of the deceased Chunilal, notification under section 10(3) of the Act has also been issued in the name of deceased Chunilal and only notice under section 10(5) of the Act has been issued in the name of the widow of deceased Chunilal T. Patel namely Chandanben C. Patel and the notice has been received only by Chandanben through one Jagdishbhai C. Patel and, therefore, no notices were served upon any heirs and legal representatives of the deceased Chunilal from 10(1) 10(6) and there was nothing on record to show that the notices under section 10(1) to 10(6) was served to each legal heirs are joined in the proceedings before the competent authority and, therefore, he has submitted that the notification and notice under section 10(1) to 10(3) were against a dead person and, therefore, were nullity in the eye of law and no such notices have been served upon the heirs and legal representatives who were parties

to the original proceedings before the competent authority and, therefore, possession which is alleged to have been taken over on 22nd December, 1987 is not legal possession in the eye of law and, therefore, entire exercise right from section 10(1) to 10(6) of the ULC Act, 1976 is nullity and as a consequence thereof, possession which is alleged to have been taken over by the respondent authorities on 22.12.1987 is also not having any legal effect. He has, therefore, submitted that these facts are not in dispute and it is not the case of even the respondents that such notices and the notifications were served upon each of the legal representatives of the deceased Chunilal T. Patel and, therefore, when no legal procedure has been followed for taking over the possession of the land in question by the State Government, then, such action on the part of the respondent is illegal and contrary to the provisions of the ULC Act, 1976.

Learned Sr. Advocate Mr. Thakkar has also submitted that in the additional affidavit in reply, now the respondents have clarified that the lands bearing survey No. 407 and 396 of village Kapurai and survey No. 246/1 and 246/2 of village Danteshwar of district Baroda are not allotted to any urban poor in view of the order dated 6.6.1994 passed by the District Collector and, therefore, the land in question is open and not allotted to any urban poor by the State Government as per the averments made in the affidavit in reply para 7 which has been subsequently clarified by the respondent no.2 in the additional affidavit in reply and, therefore, thus, the lands in question are open land. He has also submitted that the village form no. 7/12 dated 6th October, 2001 wherein the lands in question have been shown in the name of the heirs and legal representatives of the deceased CHUNILAL T.. Patel and the copy of the village form no. 7/12 has also been shown to this court. He has submitted that in view of the directions issued by this court, recent panchanama of the land in question has been drawn by the Maintenance Surveyor ULC Baroda in respect of the land in question wherein it has been specifically mentioned that the land in question is open land and there was no any construction carried out by any party. Therefore, according to him, in such circumstances, when the exercise carried out by the respondent authority is not legal and proper and is contrary to the provisions of the ULC Act, 1976, therefore, in such circumstances, this Court can go into that question and to examine the legality, validity and propriety of the action which has been taken by the respondents and also to examine the merits of the matter though there is a repeal Act, 1999

came into force and in support of such submission, he has relied upon the decision of this court in case of Ramesh Shamji Raninga versus State of Gujarat and others reported in 2000 (4) GLR 2777, para 43, 44, 45 and 46 in particular.

Learned Sr. Advocate Mr. Thakkar has also submitted that in view of the above submissions, when the possession of the land in question is with the petitioners and even according to the respondents, the land in question is with the petitioners, then, this court can enter into the question and can examine the legality, validity and propriety of the action as to whether the possession which has been taken over by the State Government is legal or not. He has submitted that considering the above submissions as undisputed factual aspects between the parties, whatever action which has been taken by the respondents are not legal and, therefore, same are required to be ignored and the same are also not having any legal effect and, therefore, the petitioners are entitled to continue in possession of the land in question and the land in question should be declared not to have been vested in the Government.

Learned AGP Mr. Sen, on the other hand, has submitted that in view of the provisions of the Repeal Act, 1999, in view of the provisions of section 3 and 4 of the said Act, this petition must abate because the respondents have already taken over the possession of the land in question from the petitioners on 22nd December, 1987 by preparing the panchanama according to the provisions of the ULC Act, 1976 by following complete procedure and, therefore, this court should not interfere in such legal process followed and carried out by the State Government. As regards effect of the repeal, he has relied upon section 6 of the General Clauses Act, 1897 which provides that where this Act or any Central Act or Regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

- (a) revive anything in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder.

Relying upon the aforesaid provisions of section 6 clause (a) and (b) thereof of the General Clauses Act, 1897, he has submitted that whatever action procedure has

been taken under the Repealed Act by the State Government must be considered as legal and valid and the same cannot be disturbed after the Act has been repealed by the ULC Repeal Act, 1999. According to him, the issue now cannot be reopened and this Court cannot examine the legality, validity and propriety of the order and the action which has been taken by the respondent authorities under the Repealed Act i.e. ULC Act, 1976. Reliance has also been placed on section 114 of the Indian Evidence Act by Mr. Sen and has submitted that the Court may presume existence of certain facts. He has submitted that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Relying upon the illustration given at item (e) below the said section, he has submitted that the Court can presume a judicial act regularity of which is in question was performed under exceptional circumstances. Therefore, relying upon these provisions, he has submitted that whatever steps have been taken by the competent authority pursuant to the order dated 17th March, 1986 under the ULC Act, 1976 have to be presumed to have been taken or initiated legally and regularly performed meaning thereby, it was in existence. Therefore, he has submitted that now after the Repeal Act, 1999, these questions cannot be reopened by this court. As regards the contention raised by the petitioners that the notification under section 10(1) to 10(6) have not been served upon the heirs and legal representatives of the deceased Chunilal Tribhovandas Patel, he has submitted that this contention was not raised by the petitioners either before the competent authority or before the appellate authority and even at the time of earlier petitions referred to hereinabove. He has submitted that such contention was not initially taken by the petitioners in this petition but the same has been taken by way of rejoinder and that cannot be permitted or considered to be pleading and, therefore, he has submitted that the contention now taken in the form of rejoinder cannot be considered in light of the provisions of Order 2, Rule 2 of the Code of Civil Procedure. He has submitted that as per Order 2 Rule (1) of the Code, every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court and as per rule (2) thereof, where a plaintiff omits to sue in respect or, or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so

omitted or relinquished. As per Rule (3) of Order 2 of the Code, a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs but if he omits except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted. According to him, these provisions shall also apply to the writ proceedings before this Court. Thus, according to him, in view of the said provisions of Order 2 of the Code of Civil Procedure, now, the petitioners cannot be permitted to raise such contentions which were not raised by the petitioners during the course of earlier proceedings before the competent authority and the appellate authority as well as the earlier petitions referred to hereinabove. He has also submitted that the interim order dated 2.2.1988 passed by the tribunal has remained as it was and none of the parties has acted upon the interim order and no effective steps were taken by the petitioners for implementation thereof and, therefore, said interim relief is not having any effect in view of the conduct of both the parties. According to him, the petitioners had not approached either the competent authority or the higher authority for implementation of the said interim orders and, therefore, these interim orders are not having any legal effect or any adverse effect on the right of the State Government for taking over the possession of the lands in question on the basis of the order passed by the competent authority on 17th March, 1986. He has submitted that the petitioners had not moved for execution of the said orders and ultimately the appeal was dismissed by the tribunal on 30.10.1993 and thereafter, status quo qua possession as on 16th June, 1994 on which day, the possession was with the respondent authorities and that possession has continued thereafter with the Government and there was no any order passed by the court or the authority to the Government for handing over the possession back to the petitioners. He has submitted that even this Court has also directed both the parties to maintain status quo as regards possession by order dated 21.9.1994 and in view of that order of this court, the possession had remained with the Government and the same was not disturbed and, therefore, in view of these submissions, he has submitted that the respondents State are in legal possession of the lands in question which has been taken after following the procedure prescribed under the Act by drawing panchanama and it was taken in presence of the panchas on 22.12.1987 and the notice under section 10(5) of the ULC Act, 1976 has been served upon the widow of the deceased Chunulal T. Patel and thus the State has followed all the procedure required to be followed under the ULC Act 1976

and thereafter the possession was obtained from the petitioners and, therefore, the State has taken the possession in accordance with law and now it cannot be considered to be illegal in light of the provisions of section 3 and 4 of the Repeal Act, 1999. He has read the entire petition before this Court and has pointed out that no such contention has ever been raised by the petitioners about the nullity and, therefore, now the petitioners cannot be permitted to raise such contentions about nullity before this Court by submitting the rejoinder. He has also submitted that vide Government Resolution dated 24.11.1983 and November, 1985, the Deputy Collector has been authorised to take over the possession of the land in question and, therefore, the Deputy Collector, ULC is empowered and authorised to take over the possession of the lands in question and, therefore, in view of these two resolutions, the possession of the land cannot be considered to have been taken by the person who is not authorised to take the same. There was no challenge made by the petitioner in the earlier petition as well as the present petition and the delegation of power to the deputy collector has not been challenged earlier by the petitioners and, therefore, now the petitioners cannot be permitted to raise such contention and they cannot be permitted to challenge the delegation of powers to the deputy collector. He has submitted that if the petitioners are permitted to raise such contentions now by filing rejoinder, same would adversely affect the rights of the respondents and the respondents will be deprived of an opportunity to submit reply to such contentions raised belatedly. Learned AGP Mr. Sen has also read the relief prayed for by the petitioners in the relief clause of the present petition and has pointed out that in view of the provisions of the Repeal Act, 1999, prayer (A) cannot be granted to the petitioners. According to the petitioners, the prayers made in clause (B) of the prayer clause are the consequential prayers which cannot be granted in view of the provisions under section 3 and 4 of the Repeal Act, 1999 considering the possession of the respondents over the land in question since 22nd December, 1987 and, therefore, according to him, no reliefs can be granted to the petitioners and, therefore, present petition is required to be rejected with costs.

I have considered the submissions made by the learned Sr. Advocate Mr. P.M. Thakkar for the petitioners. I have also considered the submissions made by the learned Asstt. Government Pleader Mr. Sen for and on behalf of the respondent authorities. I have also

considered and personally verified the original file which belongs to the proceedings of the land in question. The original file was brought by the learned AGP Mr. Sen for perusal of this Court. Learned AGP Mr. Sen has submitted that this court can consider relevant original record in respect of the proceedings which were initiated by the State Government in the subject matter of this petition.

There are certain undisputed and admitted facts between the parties. It is not in dispute that the Form No.1 under section 6(1) of the ULC Act, 1976 was submitted by the deceased Chunilal Tribhovandas Patel before the competent authority on 15th September, 1976 and the decision thereon was given by the competent authority by order dated 17th March, 1986. It is also not in dispute that prior to the order passed by the competent authority on 17th March, 1986, declarant Shri CHUNILAL T. Patel died on 16th June, 1984 and that was brought to the notice of the competent authority by the heirs and legal representatives of the deceased Chunilal T. Patel by application dated 11th May, 1985 which application was submitted by the heirs and legal representatives of the deceased through one advocate namely Shri M.M. Oza wherein it was disclosed that the declarant Shri Chunilal T. Patel has died on 16th June, 1984 and request was made to join all the heirs and legal representatives of the deceased in the said proceedings. Thus, it is clear that during the course of proceedings before the competent authority, declarant Chunilal T. Patel died on 16th June, 1984 which fact was to the knowledge of the competent authority as reflected from the order dated 17th March, 1986. There is one affidavit of the widow of the deceased namely Chandanben in the original record wherein it has been stated that the declarant Chunilal T. Patel has died on 16.6.1984 and the names of the heirs and legal representatives of the said deceased have been disclosed in the said affidavit. In the said affidavit, request was made by the widow of the deceased declarant Chunilal T. Patel to consider the property in question as ancestral property and it has been submitted that all the heirs and legal representatives of the deceased are having right, title and interest in the said property as ancestral property. From the record, it appears that the vakalatnama of the advocate Shri Oza was filed before the competent authority in the proceedings under section 6(1) of the ULC Act, 1976. Thereafter and before deciding the case, the competent authority has issued notices to the heirs and legal representatives of the deceased declarant and thereafter order dated 17th March, 1986 was passed by the competent authority against the deceased Chunilal T.

Patel and his widow Chandanben C. Patel and copy of the said order was sent to the heirs and legal representatives of the deceased Chunilal T. Patel. From the record, it is clear that the fact of death of the declarant Chunilal T. Patel was brought to the notice of the competent authority as stated earlier and yet, notification under section 10(1) and rule 6 has been issued in the name of Chunilal T. Patel, a dead person on 31st July, 1986. Chandanben C. Patel, widow of the deceased Chunilal T. Patel and Jivanlal C. Patel had filed appeal under section 33 of the ULC Act, 1976 against the order dated 17.3.1986 passed by the competent authority on 9th July, 1986.

From the original file produced by Mr. Sen, it appears that one application dated 24th December, 1987 was submitted to the respondent authorities wherein it has been pointed out that the petitioners had already filed appeal under section 33 of the ULC Act, 1976 challenging the order dated 17.3.1986 passed by the competent authority on 9th July, 1986 and that appeal was numbered as appeal No. 513 of 1986 dated 19th July, 1986 and request was made not to proceed further in the matter in respect of the order dated 17.3.1986 in view of the appeal filed by the petitioners against the said order. Request was made to wait upto the decision in the appeal proceedings. Thus, the appeal against the order dated 17.3.1986 was filed by the petitioners on 19th July, 1986 as appeal no. 513 of 1986 and subsequent thereto, notification under section 10(1) was issued on 31st July, 1986. Notification under section 10(3) was issued on 30.1.1987 and was published in the Government Gazette on 26.2.1987 and notice under section 10(5) was issued on 3.6.1987 and the possession has allegedly been taken over by the respondent state Government on 22.12.1987 and notice for determination of compensation under section 11 of the Act has been issued on 12.1.1988 and by communication dated 11.1.1988, the Mamlatdar, Baroda was informed to enter the name of the Government in the revenue record in respect of the land in question. All these are the facts which are not disputed by the parties. It is also not in dispute that the appeal No. 513 of 1986 against the order dated 17.3.1986 has been renumbered subsequently as appeal no. 27 of 1988 on 27.1.1988 and during the pendency of the said appeal no. 513 of 1986 renumbered as appeal no. 27 of 1988, the respondent authorities have issued further proceedings under section 10. Therefore, it is clear that while the appeal against the order of the competent authority was pending, possession of the land in question has allegedly been taken over by the respondent Government on 22nd

December, 1987. The observations made by this Court in case of D.S. Patel and Construction Company versus Deputy Collector, ULC, Rajkot reported in 1997 (3) GLR page 2375 are material in light of these facts. In para 11 of the said decision, this Court has observed as under:

"11. Sitting as a single judge, the aforesaid ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith. Since the appeal was pending in each case, the notification under Section 10[3] of the Act issued during its pendency would lose its importance or significance. It will have just to be ignored. No further action pursuant thereto could have been taken even after dismissal of the appeal for a reasonable period to enable the aggrieved land-holder to invoke the extra-ordinary jurisdiction of this Court under Arts.226 and / or 227 of the Constitution of India. Applying the principle of law enunciated in the aforesaid ruling of this Court in the case of Dahyabhai Manorbhai Patel [Supra], the right of invoking the extraordinary jurisdiction of this Court under Arts 226 and/or 227 of the Constitution of India within a reasonable period from the date of impugned orders would not be lost by issuing of the notification under Section 10[3] of the Ceiling Act or any action taken pursuant thereto if issued during the pendency of appeal. In that view of the matter, even if possession pursuant to the notification under Section 10[3] of the Ceiling Act is taken, it will be of no consequence."

Therefore, in view of these observations made by this Court in the said decision that since the appeal was pending, notification under section 10(3) of the Act was issued during its pendency would lost its importance or significance and it will have just to be ignored. In view of the said decision, no further steps pursuant to the order dated 17.3.1986 could have been taken even after disposal of the appeal for a reasonable period so as to enable the aggrieved land holder to challenge the order by invoking extra-ordinary jurisdiction of this Court. In the said decision, this court has observed in clear terms that the action taken pursuant to notification under section 10(3) of the Act will be of no consequence.

Similarly, the order dated 30.10.1993 passed by the tribunal rejecting the appeal and confirming the order passed by the competent authority was challenged by the petitioners before this court by filing special civil application no. 7876 of 1994 wherein the order dated 30.10.1993 passed by the tribunal was set aside and the matter was remanded back to the tribunal by order dated 21.9.1994 for hearing and deciding the appeal as per the directions issued in the order dated 21.9.1994. Thereafter, the tribunal has passed order on 5.1.1996 and has modified the order passed by the competent authority dated 17.3.1986 with a direction to the competent authority to prepare the final statement under section 9 of the ULC Act, 1976. Therefore, it was the duty of the competent authority to prepare the final statement in terms of the modification of the order dated 17.3.1986 as per the order passed by the appellate authority on 5.1.1996. However, the competent authority has not initiated any subsequent proceedings under sec. 10 as required to be initiated by order dated 5.1.1996. In the instant case, it is not disputed that after the order was passed by the competent authority on 5.1.1996, no final statement has been prepared by the competent authority in terms of the order dated 5.1.1996 and no fresh notification under sec. 10(1) to 10(6) of the ULC Act has been issued by the competent authority though the initial order dated 17.3.1986 passed by the competent authority has been modified by order dated 5.1.1996 passed by the tribunal meaning thereby that the earlier order dated 17th March, 1986 has been set aside and the same has been modified as per order dated 5.1.1996 requiring fresh process. Therefore, in absence of the fresh process in view of the tribunal's order dated 5.1.1996, whatever earlier action taken on the basis of the initial order dated 17.3.1986 would have no any legal effect or consequence because the earlier notifications under section 10(1) to 10(6) were issued on the basis of the initial order dated 17.3.86 which has lost its significance in view of the tribunal's order dated 5.1.1996 and, therefore, it was the duty of the respondent authority to act in accordance with the order dated 5.1.1996 passed by the tribunal but the respondents have not acted in accordance with the order dated 5.1.1996 and no further fresh proceedings have been initiated pursuant to the order dated 5.1.1996 passed by the tribunal and therefore, action of taking the possession on 22.12.1987 on the basis of the notifications under sec.10(1) to 10(6) of the Act in view of the order dated 17.3.1986, during the pendency of the appeal is of no legal consequence and the same will have

no any legal effect. Learned AGP Mr. Sen has not been able to make statement that any notification has ever been issued by the respondent authorities pursuant to the order dated 5.1.1996 passed by the tribunal modifying the order dated 17.3.1986 passed by the competent authority. It is, therefore, clear that the possession has not been taken over by the respondent authorities by issuing any notification under section 10(1) to 10(6) of the Act pursuant to the order of the tribunal dated 5.1.1996 whereby the tribunal has modified the order of the competent authority dated 17.3.1986. In light of this conclusion drawn by this court in these peculiar circumstances of the case, the view taken by this court in case of Dahyabhai Manorbhai Patel versus competent authority and the additional collector, Baroda reported in 1987 (2) 1396 is important. Paragraphs 7,8,9,10,11 and 12 of the said decision are material in the facts and circumstances of the present case. They are, therefore, reproduced as under:

"7. The Urban Land Tribunal has read the provisions of Sec. 10[3] of the Act in isolation. Reading the provisions of Sec.10[3] and 10[5] of the Act in isolation one is likely to reach to the conclusion that after the land is vested absolutely in the State Government free from all encumbrances with effect from the date so specified in the Notification, an appeal cannot be entertained because if appeal is entertained, how the land which is absolutely vested in the Government can be divested. But such an isolated reading of a particular provision of the statute and thereafter giving interpretation to the same is not permissible. In the case of DARSHAN SINGH DALWANT SINGH & ANR. V. THE STATE OF PUNJAB, AIR 1953 SC 83, in para 10 of the judgment the Supreme Court has observed as follows :

"It is a cardinal Rule of interpretation that the language used by the legislature is the true depository of the legislative intent, and that words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself."

In above view of the matter, provisions of Sec.

10 and particularly that of sub-secs [3] and [5] cannot be read without reference to the provisions of Sec. 33 of the Act which confers right of appeal on an aggrieved person.

8. Section 33 provides that any person aggrieved by an order made by the Competent Authority under the Act may file appeal within a period of 30 days from the date on which the order is communicated to the aggrieved person. Such an order should not be an order under Sec. 11 or sub-sec [1] of Sec. 30 of the Act. The legislature has also conferred power upon the appellate authority to condone delay in filing an appeal if it is shown that the appellant was prevented by sufficient cause from filing the appeal within time. It is not provided under Sec.33 of the Act that appeal shall be maintainable only if the same is filed before the publication of declaration under Sec. 10[3] of the Act. Thus that which has been conferred by an express provisions of the Act cannot be taken away by an unusual process of interpretation of another provision of the same statute.

9. There is also a principle of harmonious construction. In any case where there is apparent conflict between two provisions of the same statute or between two provisions of different statutes, an attempt should be made to harmonize both the provisions. As endeavour should be made to see that no absurd result follows. In the case of Mannan Lal V. Mst. Chhotaka Bibi 1970 [1] SCC 769, it so happened that initially the memo of appeal was filed on insufficient stamp. Later on deficiency was made good. The question for decision arose as to whether on the deficiency of court-fee making good the appeal could be treated as one pending on November 12, 1962 i.e. the date immediately preceding the date of enforcement of U.P. High Court [Abolition of Letters Patent Appeals] Act, XIV of 1962 which provided for abolition of appeals. The Supreme Court held that in considering the question as to the maintainability of an appeal when the court-fee paid was insufficient to start with but the deficiency is made good later on, the provisions of the Court-fees Act and the Code of Civil Procedure have to be read together to form a harmonious whole and no effort should be made to

give precedence to provisions in one over those of the other unless the express words of a statute clearly override those of the other.

10. If one reads the provisions of Urban Land [Ceiling & Regulation] Act, 1976 in the aforesaid manner it is very clear that the legislature did provide for an appeal against an order passed by the Competent Authority under Sec. 9 of the Act. The right of appeal is not made conditional on the publication or non publication of the Notification under Sect 10 of the Act. In a given case the Urban Land Appellate Tribunal may grant stay of further proceedings or may even grant conditional stay of further proceedings or may even refuse to grant stay. In cases where stay is not granted at all, the Competent Authority shall proceed further and notification as provided under Section 10 will be issued and published in the Government Gazette. In such cases it would be absurd to hold that even though the appeal is filed within time, but on account of the fact that during the pendency of the appeal Notification under Secs 10[3] and 10[5] have been issued and therefore the appeal has become infructuous. Such can never be the intention of the legislature. Therefore, the last part of the phrase occurring in Sec.10[3] of the Act "such land shall deem to have vested absolutely in the State Government" cannot be read so as to defeat the provisions of the Act, i.e. the provisions of Sec. 33 of the Act. If this construction is not adopted the right of appeal can be frustrated by not granting stay of further proceedings or by not registering the appeal immediately.

11. Such an interpretation would be both absurd and unreasonable. Therefore it has to be avoided. The only reasonable interpretation that can be given to the provisions of secs. 10[3] and 10[5] of the Act is that the vesting of the land in the Government would be subject to the result of the appeal under Sec. 33 of the Act. In cases where aggrieved party may succeed in appeal and the final order passed by the Competent Authority under Sec. 9 is set aside [or varied or modified], the further consequential steps under Section 10 also will have to be taken by the Government so as to bring the same is

confirmity with the final order under Section 9 of the Act. Just as the order under Sec.9 is set aside [or varied or modified] by the Urban Land Appellate Tribunal similarly the subsequent steps under Sec. 10 of the Act will have to be taken by the Government and it will have either to set aside [or vary or modify] its earlier actions.

12. Reading both the provisions in the aforesaid manner, the reasoning of the Appellate Tribunal that because Notification under Sec. 10[3] of the Act was issued and therefore the appeal was not maintainable cannot be sustained. The learned Counsel for the respondents has not been able to show any provisions of law on the basis of which it can be held that once the declaration under Section 10[3] of the Act is published in the official gazette, right to challenge the final order under Section 9 of the Act passed by the Competent Authority conferred upon an aggrieved party under Sec. 33 of the Act gets extinguished by adopting an unreasonable and unusual manner of interpretation of statute."

The observations made by this court in case of Dahyabhai Manorbhai Patel (supra) are relevant and material in the facts and circumstances of the case which are to the effect that the reasonable interpretation that can be given to the provisions of section 10(3) and 10(5) of the ULC Act, 1976 is that the wasting of the land in the Government would be subject to the result of the appeal under section 33 of the Act. In case where the aggrieved land holder succeeds in the appeal and the final orders passed by the competent authority under section 9 of the Act are set aside or varied or modified, further consequential steps under section 10 will also have to be taken by the Government so as to bring the same in conformity with the final order under section 9 of the Act. Similarly, subsequent steps under section 10 of the Act also will have to be taken by the Government and it will have to either set aside (or vary or modify) its earlier action in view of the ratio laid down by this Court in the aforesaid decision which the respondents herein have not done. Therefore, considering the observations and the ratio laid down by this court in the aforesaid decision, in this case, by order dated 5.1.1996, the tribunal has modified the earlier initial order of the competent authority dated 17.3.1986 with a direction to the competent authority to prepare final statement under section 9 of the ULC Act, 1976 and,

thereafter, it was the duty of the respondent authorities to take fresh consequential steps from sec. 10 onwards subsequent to the order dated 5.1.1996 passed by the tribunal and, therefore, once the order dated 17.3.1986 passed by the competent authority has been set aside or modified, then, whatever action based on the said order dated 17.3.1986 taken by the respondent authorities must have to be considered to have been set aside or having no legal effect or consequence in the eye of law in absence of any fresh steps taken by the respondent authorities and, therefore, the contention of the respondent authorities that the possession taken over on 22.12.1987 on the basis of the earlier order dated 17.3.1986 cannot be considered to be legal one because the basis of the said action namely order dated 17.3.1986 has been modified by the tribunal by order dated 5.1.1996 and no fresh steps were taken by the authorities pursuant to the order dated 5.1.1996. Similar view has been taken by this court in special civil application no. 69 of 1997 in case of Dhanabhai Devabhai Bharvad dated 27th September, 2001. This Court (Coram : H.K. Rathod, J.) has made the following observations in para 7 and 8 of the said decision :

7. I have considered the submissions of the learned advocates for the parties. It is necessary to note that one fact remains that vide order passed by this Court in Special Civil Application No.7463 / 1990 wherein the order of the appellate authority dated 27th February, 1986 passed in Appeal No.Baroda/185-85 challenged by the respondent No.3, has been set aside on 21st January, 1994 along with the order passed by the Tribunal dated 27th February, 1986 and accordingly, the matter has been remanded back to the tribunal for fresh decision keeping in mind the observations made in the said judgment and interim relief granted in the year 1990 in that petition. However, the said order granting interim relief was ordered to be continued till the appellate authority takes decision in the remanded matter. Therefore, it is obvious that the orders passed by the appellate authority on 27th February, 1986 was challenged by the respondent No.3 before this Court in Special Civil Application No.7463/ 90, wherein, interim relief was granted which remained continued upto 31st May, 1994. However, after the remand of the matter to the tribunal, the tribunal has passed the order on 31st May, 1994 setting aside the

order passed by the competent authority dated 15th October, 1983 and accordingly the land belong to Survey No.1154 has been declared in holding of the original land holder and thus, after deducting the land of 1500 sq.mtrs per unit, the land 2041 sq.mtrs has been declared as excess land out total land of 3541 sq.mtrs. However, pursuant to the order passed by the tribunal dated 31st May, 1994, the possession is claimed to have been taken over by the competent authority as per the affidavit, on 17th April, 1985. Therefore, the possession which was taken over on the basis of the order dated 15th October, 1983, the said order has been set aside by the tribunal by order dated 31st May, 1994. Thus, once the order which was relied upon by the competent authority in taking over the possession, has been set aside by the tribunal on 31st May, 1994 declaring excess land in respect of the Survey No.1154 and further adding that land in the holding of the original land holder, then fresh process is required to be carried out by the competent authority. However, considering the two affidavit in replies filed by the competent authority subsequent to the orders passed by the tribunal dated 31st May, 1994, there was no fresh exercise seems to have been carried out or no further steps seem to have been taken by the competent authority for taking over the possession of the land in question from the petitioners or from the original land holder. However, this Court has put a specific query to the learned AGP Ms.Pandit that whether any document on record shows that subsequent to the order passed by the tribunal on 31st May, 1994, the possession of the land in question has been taken over either from the petitioners or from the original land holders by the competent authority or not ? While responding this query put by this Court, learned AGP Ms.Pandit is not able to respond the query put by this Court. Moreover, one important aspect which is required to be noted that considering the order passed by the competent authority dated 15th October, 1983 was quashed and set aside and fresh order has been passed by the tribunal. However, fresh process which are required to be undertaken by the competent authority for taking possession of the land in question, are not taken nor any step has been taken, therefore, Panchnama which has been prepared by the competent authority or

authorised person on 17th April, 1985 have no legal effect because that order has been set aside by the appellate authority tribunal and it is not case of the respondent authority that possession of the land in question has been taken over by the competent authority thereafter. It is also necessary to note that the civil proceedings which initiated by the present petitioners by filing Regular Civil Suit No.632/1984 against the respondent No.3. However, in the said civil proceedings, it was established by the petitioners that they were in possession of the land in question even prior to 12 years from 1984. This fact has been proved by the petitioners before the Civil Court and in the result, the Civil Court has decreed the suit and declared that the plaintiffs are owners by adverse possession of the suit property as mentioned in the plaint. However, this judgment is pronounced by the Civil Court on 30th July, 1994.

8. It is also necessary to note that though Panchnama has been placed on record by the respondent authority, wherein it is shown that the possession of the land in question has been taken over by the authority on 17th April, 1985. But considering the two affidavit-in-reply filed by the competent authority, the competent authority in terms stated that in the reply in para-11.3 that "the petitioners are unauthorisedly residing upon the said lands". It is further averred in para-11.5 to the effect that "I submit that it is the say of the petitioners that they are residing over the lands in question since 1968, however, there is no evidence to show that the said lands are running in the names of the petitioners in the Revenue Record. In short, the effect of the affidavit-in-reply filed by the competent authority himself has agreed to the effect that the petitioners are residing upon the land in question though the land in question is running in the name of the respondent No.3 and the competent authority has considered the holding of the respondent No.3 and passed the order. However, it is also pertinent to note that looking to the affidavit in reply, the possession of the land in question has been taken over by the authority in pursuance of the orders passed by the competent authority on 15th October, 1983.

However, the aforesaid order has been quashed and set aside by the tribunal by order dated 31st May, 1994. Therefore, according to my opinion, the possession which was taken over by the authority on 17th April, 1985 on the basis of the order of the competent authority dated 15th October, 1983, the said order has been ultimately set aside on 31st May, 1994. Therefore, such possession, in the view of this court, will not have any legal effect. Furthermore, looking to the entire record and considering the averments of the respective sides so also the orders passed by the Civil Court, it has come on record that the petitioners are having possession of the land in question. Not only that but the petitioners before Civil Court are declared as the owners of the land in question by Civil Court on the basis of adverse possession, in the civil proceedings filed by the petitioners in the year 1984. Moreover, no steps have been taken by the competent authority subsequent to the order passed by the Tribunal on date 31st May, 1994 and therefore, the order which has been passed by the tribunal on 31st May, 1994, in my opinion, deserves to be quashed and set aside and consequently, the land in question which has been declared as the excess land by order passed by the Tribunal vide order dated 31st May, 1994 will not stand as the excess land as the same has been occupied in possession of the petitioners.

It is necessary to consider one more aspect in the said matter that the interim order was passed by the tribunal on 2nd February, 1988 whereby the tribunal directed maintenance of status quo ante with effect from 16.2.1976 which order had admittedly remained in force upto 30.10.1993. Pursuant to the said order dated 2nd February, 1988, the petitioners had informed the competent authority by application dated 23rd February, 1988 with a request for not disturbing their possession over the land in question in view of the interim order of the tribunal directing to maintain status quo ante as on 16.2.1976. Therefore, when the interim stay in the form of status quo ante had operated in favour of the petitioners in relation to the surplus land and by application dated 23.2.1988, request was made by the petitioners that their possession should not be disturbed. Therefore, legal effect of the interim order dated 2nd February, 1988 would be that whatever action taken during the intervening period from 16th February,

1976 till 2nd February, 1988 has been taken by the respondent authority are required to be restored ante and therefore, the order passed by the competent authority on 17th march, 1986 and the subsequent proceedings u/s. 10 of the Act are stayed by the tribunal with a direction to restore the situation prevailing as on 16.2.1976 in respect of the land in question. On 16.2.1976, admittedly, there was no dispute about the possession of the petitioners over the land in question. Therefore, considering the legal effect of the said interim order and also giving right and legal effect to the said interim order which has operated upto 30.10.1983, it was the duty of the respondent authorities to give true and legal effect to the said order by implementing and executing the said order and the request was very much made by the petitioners by application dated 23.2.1988 for not to disturb their possession over the land in question in view of the interim order of the tribunal dated 2.2.1988. Therefore, in view of the order of the tribunal to maintain status quo ante as on 16.2.1976 dated 2.2.1988 and also in view of the fact that the appeal was preferred in the year 1986 against the order dated 17.3.1986 being appeal no. 513 of 1986, the action of the respondents in taking over the possession of the land in question by panchanama dated 22nd December, 1987 is also not having any legal effect if legal and correct effect of the order dated 2nd February, 1988 is given to. The decision given in appeal dated 30.10.1993 was challenged by the petitioners before this court by filing special civil application no. 7876 of 1994 wherein this court has initially granted protection by directing to maintain status quo as on 16.6.1994 qua possession only and it is not the case of the respondents that they have taken over the possession during the intervening period from 30.10.1993 to 16.6.1994 on which the parties were directed to maintain status quo in special civil application no. 7876 of 1994. In view of these facts, the petitioners are entitled to the benefit of the interim order dated 2nd February, 1988 passed by the tribunal though according to the submissions made by Mr. Sen, none of the parties had acted upon the said order, and since the petitioners had not approached the respondent authorities for enforcing the said order, said order dated 2.2.1988 is having no effect. If the petitioners have not approached any authority for enforcing the order dated 2.2.1988, that does not mean that the respondents are not required to implement and execute the said order since the respondents have not objected against the operation of the said order by approaching any higher forum against the said order. Therefore, it cannot be said that the interim order dated

2.2.1988 is not having any legal effect and it is required to be deemed to have been implemented and executed in respect of the legal rights of the respective parties. It is also necessary to note that by order dated 21.9.1994 passed by this court in special civil application no. 7876 of 1994, this court, while setting aside the order dated 30.10.1994 passed by the tribunal in appeal, has remanded the matter back to the tribunal and the matter was restored to the files of the tribunal. This would mean that the interim order dated 2nd February, 1988 has also been restored to the files of the tribunal which is binding to the respondent authorities. Therefore, the directions of the tribunal to maintain status quo ante by interim order dated 2.2.1988 has, pursuant to the remand made by this court by order dated 21.9.1994, has remained in force upto 5th January, 1996 when the appellate authority, pursuant to the remand of the appeal, has modified the order of the competent authority dated 17.3.1986 and, therefore, the interim order which has operated from 2.2.1986 till 5.1.1996 is binding to the respondent authorities and the respondent authorities are required to respect the said order passed by the tribunal and and the respondents cannot be permitted to take a stand that the petitioners had not approached the authorities for enforcing the said interim order and, therefore, said order is not having any legal effect.

According to my view, in any legal proceedings, if any judicial order has been passed either interim or ad-interim in nature, same must be given respect by the respective parties and the respondents being the State, it is not proper on their part to take such a stand that it has not been enforced since the petitioners had not approached the authorities for enforcement of the said order. Therefore, it is binding to the respondent authorities and the respondents are required to give true and legal effect to the same. If the submission of Mr.. Sen, learned AGP is accepted that the order dated 2nd February, 1988 is not having any legal effect, then, it would amount to give permission to the respondent authorities to flout and violate the interim orders passed by the tribunal and this court. It would also amount to give permission to the respondent authorities to act according to the order dated 17.3.1986 passed by the competent authority which was under challenge in appeal filed by the petitioners and, therefore, according to my opinion, the respondents are bound to comply with the interim order dated 2.2.1988 and they are required to restore the position prevailing on 17th February, 1976 in respect of the land in question and therefore, whatever

action and the proceedings have been initiated in view of the order dated 17th March, 1986 passed by the competent authority prior to the interim order dated 2.2.1988 is having no legal effect and the same is having no consequence in respect of the legal rights of the parties and, therefore, the action on the part of the respondent authorities in taking over the possession on 22.12.1987 is having no legal effect and the same is of no consequence.

Learned AGP Mr. Sen has contended that in light of the fact that the possession has been taken over by the State Government on 22nd December, 1987 and the relevant panchanama has been placed on record and the relevant notifications under sec. 10 have also been issued and, therefore, legality and propriety of such action cannot be examined by this court in view of the provisions of the the Repeal Act, 1999. In view of this submission, it is necessary to consider the decision of the Division Bench of this Court in case of Ramesh Shamji Raninga versus State reported in 2000(4) GLR page 2777. The Division Bench of this Court has observed as under in para 43 to 46 :

"43. We have given our thoughtful consideration to the points urged and carefully examined the ratio of the decision of the learned single Judge in the case of Maganlal Patel [supra]. On a bare reading of the provision and particularly the language used in opening part of Sec.4 "all proceedings relating to any order made or purported to be made ... shall abate" only means that such proceedings pending before any Court, tribunal or authority shall not be continued and would come to an end. The language used aforesaid can never mean that the power of the Court, tribunal or authority to examine whether the order passed or purported to have been passed under the Principal Act, while it was in operation, was valid or not, has been taken away. Any other interpretation on the language of Sec. 4 would be unconstitutional, because the Legislature by no provision can completely take away the power of judicial review. The learned single Judge, in the portion of his judgment quoted above, has taken a view that as an effect of Section 4 of the Act of 1999, even writ proceedings before the High Court would abate. We find no ground to take a contrary view and overrule his judgment on the interpretation of Sec.4 but we consider it necessary to add a rider

or explanation so as to construe the provision in a manner to make it constitutionally valid. In the impugned provision of Sec.4, the word "abate" if construed harmoniously in the light of the constitutional provisions, would mean that the proceedings under the Repealed Act would not be continued on the repeal because as a result of repeal of the Principal Act, the proceedings thereunder are rendered infructuous. In our considered opinion, provisions of Sec.4 cannot be read and construed to infer that the effect of abatement would be that even validity of actions taken under the Repealed Act and examination of its provisions for the purpose of ascertaining whether any rights and liabilities thereunder are saved, would be outside the scrutiny of Courts, tribunals or authorities. The inference of such effect of Section 4, as to take away completely power of judicial scrutiny, would be a clear negation of the legal and constitutional powers of the Courts, tribunals and authorities under the two enactments. Such interpretation would militate against the theory of basic structure of the Constitution as propounded by the Constitution Bench of the Supreme Court in the case of His Holiness Kesavananda Bharati Sripadagalvaru & Ors. Vs. State of Kerala, AIR 1973 SC 1461 which is followed and reiterated by recognizing the power of superintendence of the High Court under Article 227 of the Constitution over Administrative Tribunals in case of L. Chandra Kumar V. Union of India & Ors., AIR 1997 SC 1125. In the case of Chandra Kumar, the Supreme Court has reiterated that the powers of judicial review under Article 226 of the High Court and Article 32 of the Supreme Court is an integral and essential feature of the Constitution, constituting part of its basic structure. The independence of judiciary is also a basic part of the Constitution. The provisions of Section 4 having an effect of abatement of pending proceedings in relation to an 'order made or purported to be made' under the Repealed Act, cannot be construed to completely take away the power of the Courts, tribunals and authorities as judicial and quasi-judicial bodies to examine the validity of the order or action taken under the Repealed Act and to find out the impact of Repealing Act on the rights and liabilities of the land owners and the State. An example will make the legal position clear. Under Repealed

Act, suppose an agricultural land which is not covered by the definition of 'urban land' under Section 2[o] of the Repealed Act of 1976 is clubbed with other urban land of an owner and declared excess to be deemed to have been acquired and vested in the State. Thereafter, it is taken possession of. It would be saved and retained by the State as an effect of Section 3[1] [a] of the Repealing Act of 1999. Construction as sought to be put on Sec.4 would result in abatement of case of such owner pending before any authority, Court or tribunal and would deprive the land owner from contending that he did not hold any excess urban land, such land was not governed by the Repealed Act of 1976, and was wrongly treated to have been acquired and vested in the State and its possession was wrongly taken from him by force and coercive methods. Such unjust result cannot be intended to have been provided in Sec. 4 of the Act of 1999.

44. The provisions of Sec. 4 providing for abatement of all proceedings under the Repealed Act, can only mean that on repeal of the Principal Act, all proceedings under it, to the extent they are not saved and left unaffected by the Repealing Act, would not be proceeded with as having been rendered infructuous. All such pending proceedings in which previous operation of the Repealed Act is challenged can never be deemed to have been abated, as the pending cases would require some adjudication and decision on the question of legal effect of the abatement provided in Sec. 4 of the ct. "Purport" is a well known word in legal usage and has many shades of meaning to be ascertained in the context of the provisions under construction. IN the present context, it cannot be construed to mean that proceedings found to be de hors of the Repealed Act, or beyond jurisdiction of the concerned authorities, who had undertaken it, although prima facie invalid, would be beyond the scope of judicial scrutiny. The use of word "purport" in Sec.4 is to be read down in the manner not to render it unconstitutional. The Legislature can never be presumed to have intended that even an order passed de hors the Act or beyond jurisdiction of the authorities under the Repealed Act would be outside judicial scrutiny. Every law is presumed to be prospective in operation unless a contrary

intention is expressed in that law. By repeal of Principal Act, its previous operation cannot be held to be beyond judicial scrutiny where such previous orders and proceedings are found to have adversely and prejudicially affected the parties. The right of land owners to challenge the validity of such proceedings cannot be intended to have been taken away by providing abatement of such proceedings. As observed by us above, "the basic structure" theory of the Constitution in KESAVANANDA BHARATI'S CASE [supra] and reiterated in L. CHANDRA KUMAR'S case [supra] does not countenance such an unconstitutional and unjust situation. An interpretation of the provisions, therefore, that such law does not deprive the power of independent judiciary has to be preferred.

45. The judgment of the learned single Judge

in the case of Maganlal Patel [Supra] does not appear to us to have laid down anything contrary to the constitutional scheme. As held by the learned single Judge, the word 'proceedings' as used in Sec.4 of 1999 Act may include writ proceedings in the high Court and the law can be made to render them infructuous but the power of the Constitutional Court of judicial scrutiny cannot be held to have been taken away by such Legislation. The constitutional power of High Court or Supreme Court to decide whether, on the facts and legal position in a given case, the proceedings before it would abate or not, can never be taken away by ordinary law. We also do not find any such intention of the Legislature in enacting Sec. 4 in the Act of 1999. Judicial scrutiny of actions taken and order passed under Repealed or Repealing Act would always be permissible and the Court, tribunals and authorities can decide whether on the facts and law in a given case, the proceedings before it had abated or been rendered infructuous or not. To the above extent, the provision under Section 4 have to be read down. The judgment of the learned single Judge [Supra] has to be understood and the provisions construed in a reasonable manner accordingly.

46. As a result of the discussion aforesaid

of various grounds urged before us, our conclusions are -

[1] Section 3[1][a] of the Repealing Act of 1999 is a constitutionally valid piece of legislation and the challenge made to it by the petitioner fails.

[2] The provisions in Sec. 4 of the Repealing Act of 1999 are also valid. Construed reasonably, as discussed above, they mean that the question whether, on the facts and law, in a given case, the pending proceedings before a Court, tribunal or authority under the two enactments, would abate or not, is a question open to judicial scrutiny."

Therefore, in view of the observations made by this court in case of Ramesh Shamji Raninga (supra), considering the provisions of section 4 of the Repeal Act, 1999, in a given case, pending proceedings before the Court, tribunal or authority under the two enactments would abate or not is a question open for judicial scrutiny and, therefore, this court can examine the legality, validity and propriety of such action taken by the respondent authorities pursuant to the Repealed Act of 1976 and similarly, this court in Special Civil Application No. 8402 of 1999 in case of Ambalal Parshottambhai Patel through their power of attorney holder Kamlesh Parikh decided on 5th December, 2000 has made the observations where to some extent, similar question has been examined by this Court. No doubt, against the said decision, according to Mr. Sen, the State has already preferred the letters patent appeal which is pending. However, no stay has been granted by the division bench of this court against the said decision and, therefore, this is also required to be considered which is equally applicable to the facts of the present case. Relevant observations made by this court in the said decision are reproduced as under:

"The petitioner has, however, challenged the action of the authorities in taking illegal possession of paper, which is nothing but symbolic possession. On this point, it is clear stand of the petitioner that unauthorised possession was taken on 20-3-1986. The question is, whether it was paper possession, symbolic possession or actual possession, can such possession be taken during pendency of the scheme under Section 21 of the Act. Admittedly, on

20-3-1986 petitioner's scheme under Section 21 submitted on 22-8-1985 was pending. Right from the beginning the stand of the petitioner was that, he wanted to erect dwelling units for the weaker sections of the society. The said scheme though rejected on 15-12-1986 will be deemed to be pending in view of the remand order of the Urban Land Tribunal dated 19-9-1998. Even otherwise, on 20-3-1986 the petitioner's scheme under Section 21 was pending and it was rejected by the authority at the first instance on 15-12-1986. On these facts, it can be said that action of taking possession, whether actual, symbolic or on paper, on 20-3-1986 is illegal. In this view I am fortified by two decisions of this Court and a decision of the Apex Court.

The Division Bench of this Court in SAMARATHBEN M. CHOKSHI V. STATE 1994 [1] GLR 203, has held that the State is under a duty to stay proceedings beyond the stage of Sec.10[2] of the Act both if an exemption application under Sec.20 or Sec.21 is preferred. Identical view was taken by another Division Bench of this Court in SAVITABEN R. PATEL V. STATE OF GUJARAT 1999[1] GLH 100.

In Samarathben M. Chokshi's case [supra], the Division Bench ultimately observed as follows :

- [1] The proceedings under the Act in respect of the lands in question prosecuted upto the stage of Section 10[2] of the Act are for the present left untouched,
- [2] The proceedings prosecuted after the stage of Section 10[2] of the Act did not survive; and
- [3] The prosecution of further process under the Act after the stage of Section 10[2] of the Act will depend upon the decision on the application under Section 21 of the Act.

Same view has been reiterated in Savitaben R. Patel's case [supra].

Examining these two decisions, it is clear that if an application under Section 20 or Section 21 of the Act was pending, proceedings upto Section 10[2] of the Act only could be maintain and further proceedings after Section 10[2] would not survive. Further proceedings after Section 10[2] of the Act will depend upon the decision of the

application under Section 20 or section 21 of the Act. In the case before me, this situation does not arise. Because of Repeal Act, the remand order of the Tribunal has, for all purposes, becomes infructuous and the competent authority, after the Repeal Act, cannot take up the scheme under Section 21 for fresh consideration but, in any case, since the scheme under Section 21 of the petitioner was pending the competent authority could not have travelled beyond Section 10[2] of the Act.

The Apex Court has, however, gone a little further in the case of DAROTHI CLARE PAREEIRA V. STATE OF MAHARASHTRA AIR 1996 S.C. 2553. It was held in this case that, "having regard to the scheme of the Act, it cannot be said that until the application under Section 21 or Section 20 is considered and disposed of, the competent authority has no power to have the notification under Section 10[3] vesting the excess land in the Government published. The very language of Section 20 & 21 and the exercise of the power thereunder would arise only when the land stands vested in the Government. The power of examination and exemption would arise only when the Government becomes the owner and the eartwhile owner seeks to obviate the hardships under Section 20 or to subserve the housing scheme for weaker sections under Section 21 as envisaged thereunder. Thereat, the Government is required to consider whether the proposals made by the eartwhile owner for undertaking the scheme as envisaged under Section 21 or hardships as envisaged under Section 20 for exemption would merit consideration." Thus, from this verdict of the Apex Court, it is clear that the authorities, even during pendency of scheme / application under Section 20 or sec.21 of the Act, could have gone upto the stage of Section 10[3] of the Act and not beyond that. If this is so, then action of the authorities in issuing notification under Section 10[5] of the Act is patently illegal and such illegal action which is prima facie borne out from the counter affidavit of Shri S.A.Patel can be examined in this writ petition. The counter affidavit of Shri SA Patel reveals that notification under Section 10[3] was issued on 31-5-1985 and was published on 25-7-1985. Upto this stage, there was no illegality in the action of the authorities. However, it is further clear

from this affidavit that, thereafter notices under Section 10[5] were issued on 17-12-1985 and 23-1-1986 and were served on the petitioner. This action was patently illegal, in as much as, the authorities could not have gone beyond Section 10[3] of the Act during pendency of the scheme of the petitioner under Section 21 of the Act. If the authorities further acted to take possession either on paper or actual on 20-3-1986, they committed further illegality and this illegal action cannot be validated despite the fact that the principal Act has been repealed by Act No.15 of 1999."

Therefore, in view of the observations made by the division bench of this court in aforesaid decision and also in view of the view taken by the learned single Judge of this Court in aforesaid special civil application, the legality, validity and propriety of the action which has been taken by the respondent authorities can be examined by this court inspite of the provisions of the Repeal Act, 1999 and it is also open for this court to examine the question as to whether the possession which has been taken over by the State Government is legal or not and whether the same is in accordance with law or not. In view of the aforesaid decision, according to my view, all these questions can certainly be examined and appreciated by this court and judicial scrutiny thereof is not barred by the provisions of the Repeal Act, 1999.

In view of the above observations and also considering the fact that during the pendency of the appeal, the respondent authority has initiated the proceedings on the basis of the order passed by the competent authority dated 17.3.1986 upto the stage of sec.10(1) to 10(6) of the ULC Act, 1976 and the possession has also been taken over during the pendency of the appeal and inspite of the interim order directing maintenance of status quo ante as on 16.2.1976, according to my view, such actions and proceedings of the respondent authorities are illegal and such possession of the Government over the land in question on the basis of the order dated 17.3.1986 is not having any legal effect in the eye of law and similarly subsequent to the order passed by the tribunal on 5.1.1996, no further steps were taken by the competent authority and therefore also, action of having the possession on 22nd December, 1987 is illegal and whatever earlier action or the proceedings initiated prior to the order dated 5.1.1996 passed by the

tribunal are required to be considered as non est and, therefore, this court is entitled to consider the legality, validity and propriety of such action on the part of the respondent authorities while exercising the extra ordinary jurisdiction under Article 226 and/or 227 of the Constitution of India inspite of having the provisions of the Repeal Act, 1999 and, therefore, the alleged possession taken over by the respondent authorities on 22.12.1987 is not legal and the same is contrary to the provisions of the Repealed Act, 1976 and the land has not vested in the Government and considering the averments made in the present petition as well as during the pendency of the proceedings before the appellate authority, as well as before this court, when the petitioner has made prayer in para 10(B) of the petition to restrain the respondents from taking over the possession of the land in question during the pendency of this petition, it could be inferred that the petitioners are in legal possession of the land in question.

In view of the aforesaid discussion, following order is passed.

For the reasons recorded hereinabove, the present petition is allowed. It is hereby declared that the respondent authority has not established legal possession of the land in question as alleged by the panchanama dated 22nd December, 1987 and, therefore, it is declared that the petitioners are in possession of the lands in question which has been declared as excess vacant land by the competent authority by order dated 17th March, 1986 as modified by order dated 5th January, 1996 passed by the tribunal. It is also declared that the lands in question has not vested in the Government and the petitioners are entitled to continue the possession of the land in question as the owners of the lands in question and, therefore, the petitioners are entitled to have the benefits of the ULC Repeal Act, 1999 and the proceedings which were at the stage of section 9 of the ULC Act, 1976 as per the order dated 5th January, 1996 shall stand abated. Rule is made absolute accordingly in terms indicated hereinabove with no order as to costs.

Dt. 23.10.2001. (H.K. Rathod, J.)

Vyas